

May 17, 2007

RE: Steve Bren v. Department of Revenue  
Allocation Review No. ALLO-07-013

Dear Mr. Bren:

The Director's review of the Department of Revenue's (REV) allocation determination of your position has been completed. The review was based on written documentation. REV determined that your position was properly allocated to the Excise Tax Examiner 4 classification. You feel that your position should be allocated to a Washington Management Service (WMS) Band 2 position or that you should be awarded a lump sum award or other compensation to create equity, and that REV should be directed to develop procedures for determining whether a position should be included in the WMS. The remedies you are requesting are not within the jurisdiction of the Director of the Department of Personnel nor the Personnel Resources Board to grant.

**Request to be allocated to a Washington Management Service (WMS) Band 2 position:**

RCW 41.06.500(1) states, in relevant part:

Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. . . . The rules shall govern . . . classification and allocation of positions . . . for managers. *These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.* (Emphasis added.)

Consistent with RCW 41.06.500, the Director adopted Chapter 357-58 WAC to address the Washington Management Service. WAC 357-58-035 states: "Each agency identifies all positions that fit the definition of manager. Those identified positions are WMS positions." It is the agencies' responsibility to determine which general service classified positions should be in the WMS.

Chapter 357-58 WAC includes a provision for employees whose positions are included in the WMS to request reconsideration of an agency's decision about whether or not the position should be included in the WMS. However, your position is not a WMS position, therefore, this provision does not apply.

In your situation, the provisions of Chapter 357-13 WAC apply. Under this chapter, the Director adopts the classification plan to which agencies allocate their classified positions. Pursuant to WAC 357-13-080, employees may request a Director's review of a position review or reallocation of a classified position allocated to a general service classification. WAC Chapter 357-13 does not apply to WMS positions. (See WAC 357-58-055).

**Request to be awarded a lump sum award or other compensation to create equity:**

Compensation is governed by Chapter 357-28 WAC. Neither the Director of the Department of Personnel nor the Personnel Resources Board has the authority to grant a lump sum award or other compensation per your request. Agencies that have been granted performance management confirmation may award lump sum recognition awards, but this is discretionary on the part of the agency.

**Request that REV be directed to develop procedures for determining whether a position should be included in the WMS:**

WAC 357-58-075 requires agencies to develop salary administration policies for WMS positions but the rules do not require agencies to develop policies or procedures for determining whether a position should be included in the WMS. It would be inappropriate for the Director of the Department of Personnel to require an agency to develop procedures or policies not required by rule.

**Background**

You began seeking reallocation of your position to the WMS in 2004. You continued to pursue this matter and in October 2006, you requested a desk audit of your position and asked that your position be placed in the WMS. By letter dated January 5, 2007 Michael Grundhoffer, Assistant Director of the Audit Division, denied your request. On January 20, 2007, you requested reconsideration of Mr. Grundhoffer's determination by Cindi Holmstrom, Director. Also by letter dated January 20, 2007, you responded to Mr. Grundhoffer about his decision. By letter dated February 9, 2007, Marcus Glasper, Senior Assistant Director, responded to your request for reconsideration and denied your request.

On February 23, 2007, you submitted a letter to the Director of the Department of Personnel requesting that your Excise Tax Examiner 4 position be placed in a WMS Band 2 position, or that you be awarded a lump sum award or other compensation to create equity, and that REV be directed to develop procedures for determining whether a position should be included in the WMS.

By letter dated March 7, 2007, Teresa Parsons, Director's Review Supervisor, acknowledged receipt of your letter and clarified that "[s]ince you are not a WMS employee, your request for a Director's review will be based on a comparison of your assigned duties and responsibilities to the Excise Tax Examiner 4 classification to ensure you are properly allocated within the Washington General Service (WGS)." In addition, Ms. Parsons asked REV to review your assigned duties and issue a written determination regarding the allocation of your position.

By letter dated March 30, 2007, Dorothy Hibbard, Senior Human Resources Consultant, issued a written determination finding that your position was properly allocated to the Excise Tax Examiner 4 classification.

Subsequently, you and REV were notified of the exhibit deadline for the written Director's review of your request. On May 4, 2007, you provided a packet of your exhibits for the review.

### **Summary of Mr. Bren's Perspective**

You assert that you perform work comparable to other positions allocated to the WMS and that REV made their decision to deny your request based on the Governor's mandated WMS cuts, not on the duties and responsibilities assigned to your position. You contend that REV did not conduct an adequate desk audit of your position and that they did not provide adequate written support for their decision to deny your request. You contend that all the Excise Tax Examiner 4 positions in the Taxpayer Account Administration were allocated to WMS positions in 2003, but your position in Account Research and Desk Examination was not. You also contend that between 2004 and 2005, the National Voluntary Disclosure Program, the Statewide Public Works Contract Program, the Statewide Corporate Dissolution Program, and the National Lemon Law Refund Program were transferred to your division. You assert that these programs were the responsibility of WMS Band 2 positions prior to being transferred to your division. You assert that the nature, scope and responsibility of your position more closely align with the comparable WMS Band 2 Field Audit Manager and Taxpayer Account Administration positions than an Excise Tax Examiner 4 position and that your position should be placed in WSM Band 2.

### **Summary of REV's Reasoning**

REV compared the duties and responsibilities described in your Position Description (PD) to the Excise Tax Examiner 4 specification and determined that your position is responsible for the development and implementation of specific functions and projects within the statewide/national correspondence audit operations, the Voluntary Disclosure program, and the statewide/national public works contract clearance program/project. REV determined that your duties and responsibilities best fit the Excise Tax Examiner 4 classification.

### **Director's Determination**

You argued that your position was comparable to other WMS Band 2 positions at REV. However, the purpose of a general service position review is to determine which general service classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available general service classification specifications. This review results in a determination of the general service class that best describes the overall duties and responsibilities of the position.

While a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or

misallocation of a similar position is not a determining factor in the appropriate allocation of a position. Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

As the Director's designee, I carefully reviewed all of the documentation in the file including your letter requesting a review, the supplemental documents you provided on May 4, 2007 (Exhibit D), the duties and responsibilities described in the PD for your position, and the Excise Tax Examiner 4 classification.

Based on my review of the documents, the available classifications, and my analysis of your assigned duties and responsibilities, I conclude that your position is properly allocated to the Excise Tax Examiner 4 classification.

### **Rationale for Determination**

The Excise Tax Examiner 4 is the highest level class within this classification series. The definition for the class states:

In the Department of Revenue, has direct responsibility for developing and implementing specific functions or projects within a section of the division. Supervises, directs, and controls the activities of excise tax examiners and support staff, or serves as liaison with the Legislation and Policy Division to revise WAC and other related administrative publications and assists in responding to inquiries relating to legal or policy issues. Provides authoritative information and guidance to staff on analysis of taxpayer reporting or accounting methods and acts as a divisional or departmental representative to taxpayers, the general public, the news media, financial institutions, local government or others.

Implements new laws, policies, procedures, directives and plans. Plans and establishes work assignments to maintain balanced workloads or to redirect staff efforts based on workloads in other units/section. Initiates or participates in systems and process redesign for re-engineering.

Develop, monitor, review and coordinate training to staff or other agency personnel on programs or functions within the unit, section or division.

Your position is described by this definition. Your position reports to a WMS Band 2 Program Support position which reports to a WMS Band 3 Program Manager position. The Program Manager position reports to the Assistant Director. In summary, within the Account Reconciliation and Desk Examination Unit, your position supervises, plans, leads, organizes, and controls ten professional staff which includes senior-level and lead Excise Tax Examiner 3s, a Revenue Auditor 2, and journey-level Excise Tax Examiner 2s. Your unit is responsible for the statewide and national correspondence audit operations, statewide and national Voluntary Disclosure program, and the statewide and national public works contact clearance program. In brief, you set priorities for staff, participate in discussion and decision-making for issues at the statewide level, act as a liaison between the field office and headquarters, participate in and/or chair various divisional and multi-divisional work groups or quality

teams, recommend agency and division policies, implement agency and divisional policy changes, and oversee and supervise staff assigned to your unit.

All the duties and responsibilities of your position are encompassed in the Excise Tax Examiner 4 classification. Your position is properly allocated.

**Appeal Rights**

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board by filing written exceptions to the Directors' determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the Board within thirty (30) calendar days after service of the Directors' determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Holly Platz  
Director's Review Investigator

cc: Dorothy Hibbard, REV  
Lisa Skriletz, DOP  
Tina VanderWal, DOP  
Michael Hanbey, ATT

List of Exhibits for Bren ALLO-07-013

- A. Mr. Bren's appeal review request form received February 23, 2007, with attachments:
  - 1. Letter dated February 22, 2007, from Mr. Bren to Eva Santos requesting a Director's review
  - 2. Timeline
  - 3. ARDE (Account Research and Desk Examination Unit Supervisor Chart
  - 4. Letter dated February 9, 2007 from Marcus Glasper responding to Mr. Bren's request
  - 5. Letter dated January 20, 2007 from Mr. Bren to Cindi Helmstrom
  - 6. Letter dated January 20, 2007 from Mr. Bren to Michael Grundhoffer
  - 7. Letter dated January 5, 2007 from Michael Grundhoffer to Mr. Bren
  - 8. Fax cover sheet dated February 23, 2005 from Jeff Nelson to Robert Cerbana
- B. April 3, 2007 letter from Dorothy Hibbard, with enclosures:
  - 1. Letter dated March 30, 2007 from Dorothy Hibbard to Mr. Bren finding that his position was properly allocated
  - 2. Unsigned Washington Management Service Management Position Description dated November 1, 2006, for position number 2391, and containing handwritten notes
  - 3. Accounts Reconciliation and Desk Examination (ARDE) Unit Organization Chart
  - 4. Email dated October 31, 2006 from Mr. Bren to Pat Hazzard
- C. Letter dated May 1, 2006, from Mr. Bren to Karen Wilcox including: Comparison of ETE4/WMS FAM/ARDE Supervisor Duties and Resume for Steve A Bren, CPM, and enclosing packet of exhibits:
  - 1. Section 1: ARDE Description of Programs and Division FAM Listing
  - 2. Section 2: Organizational Charts (includes duplicate of A-3)
  - 3. Section 3: Like WMS Position Descriptions in the Agency
  - 4. Section 4: WMS Position Descriptions for my [Mr. Bern's] position
  - 5. Section 5: Correspondence (includes partial duplicate of B-4, duplicate of B-2 without the handwritten notes, and duplicates of A-7, A-6, A-5, A-4, A-1 and B-1)
- D. Classification Specification for Excise Tax Examiner 4